

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MICHAEL MCGREGOR, ZACHARY GIAMBALVO,
PAUL FELICE, MATTHEW OLIVIERI, EDWARD
NEWMAN, and DARK STORM INDUSTRIES, LLC,

Plaintiffs,

23 Civ. 1130

-against-

SUFFOLK COUNTY, New York,
Police Commissioner RODNEY HARRISON,
in his Official Capacity, and Acting Superintendent
STEVEN NIGRELLI, in his Official Capacity,

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Defendants.
-----X

Plaintiffs, MICHAEL MCGREGOR, ZACHARY GIAMBALVO, PAUL FELICE,
MATTHEW OLIVIERI, EDWARD NEWMAN, DARK STORM INDUSTRIES, LLC, and all
similarly situated individuals, for their Complaint respectfully state:

NATURE OF THE ACTION

1. This is an action for, *inter alia*, declaratory and injunctive relief, presumed compensatory damages in at least a nominal amount for the plaintiffs' constitutional harms, proximately resulting from Suffolk County's (i) enforcement of Senate Bill 9458, which requires ordinary people to apply for and obtain a discretionary license to purchase, receive, sell, exchange, and/or dispose of semiautomatic rifles, and register their weapons with the government, all under penalty of criminal sanctions; and (ii) enforcement of policies that result in exorbitant **2-3 year delays** in issuing a license to purchase, receive, sell, exchange, and dispose of semiautomatic rifles.

2. Plaintiffs' presumptively protected conduct – the purchase, receipt, sale, exchange, and/or disposal of semiautomatic rifles - has ground to a halt.

3. New York State’s enactment of Senate Bill 9458 (the “Rifle Bill”) requires ordinary people apply for and obtain a discretionary and subjective “may issue” license to purchase, take possession of, give, exchange, sell, and/or dispose of a semiautomatic rifle, and punishes non-compliance with arrest, felony charges, incarceration, and other criminal and civil penalties. [See, Senate Bill 9458 Annexed as Exhibit 1].

4. The Rifle Bill prevents ordinary people from taking possession of, transferring, and purchasing semiautomatic rifles and prevents Federal Firearms Licensees (gun stores) from selling semiautomatic rifles to individuals who have passed a federal NICS¹ background check but do not hold a license to purchase or receive semiautomatic rifles.

5. The Rifle Bill is unquestionably offensive to the text, tradition, and history of the Second Amendment and must be enjoined. Under the *Bruen* test, there is no historical tradition of requiring that the People seek and obtain permission from the government before exercising the pre-existing right to bear Arms – particularly long guns.

6. Plaintiffs are entitled to a judicial declaration that the Rifle Bill violates the Second Amendment, applied to the states through the Fourteenth Amendment.

7. Plaintiffs are also entitled to a preliminary and permanent injunction against Suffolk County, New York, and Suffolk County Police Commissioner Rodney Harrison, Acting Superintendent of the New York State Police Steven Nigrelli, and all successors, and their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with such defendants, who receive actual notice thereof from implementing and enforcing the Rifle Bill.

¹ National Instant Criminal Background Check System.

JURISDICTION AND VENUE

8. Jurisdiction in this court is proper pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under of color of the laws, statutes, ordinances, regulations, customs, and usages of the State of New York, of rights, privileges or immunities secured by the United States Constitution. This action seeks relief pursuant to 28 U.S.C. §§ 2201, 2202, 42 U.S.C. §§ 1983 and 1988. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

THE PARTIES

9. Plaintiffs, MICHAEL MCGREGOR, ZACHARY GIAMBALVO, PAUL FELICE, and MATTHEW OLIVIERI are all natural persons and residents of those portions of Suffolk County, New York subject to the jurisdiction of the Suffolk County Police Commissioner for purposes of licenses issued under Penal Law § 400.00, *et seq.*

10. Plaintiffs MICHAEL MCGREGOR, ZACHARY GIAMBALVO, PAUL FELICE, and MATTHEW OLIVIERI are required to apply in their county of residence for any license issued under Penal Law § 400, *et seq.*

11. Plaintiff DARK STORM INDUSTRIES, LLC (“DSI”) is a limited liability corporation formed and existing under the laws of the State of New York.

12. DSI lawfully engages in, *inter alia*, the manufacture and sale of semiautomatic rifles in the State of New York, and has a principal place of business in Suffolk County, New York.

13. EDWARD NEWMAN is the lawful owner and operator of DSI.

14. Defendant, SUFFOLK COUNTY, New York (hereinafter the “County”), is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of the State.

15. Defendant, RODNEY HARRISON, (hereinafter “Commissioner Harrison” or “SCPD”), is the police commissioner of Suffolk County and is sued in his official capacity only.

16. As Suffolk County police commissioner, Harrison is the statutory pistol “Licensing Officer” as defined by Penal Law § 265.00(10) having jurisdiction to, among other duties, issue licenses under Penal Law § 400.00 to Suffolk County residents, including Plaintiffs, and to make and enforce the policies and procedures of the SCPD Licensing Bureau.

17. As the police commissioner, Harrison is duty-bound to enforce all provisions of the New York State Penal Law, as are his officers.

18. Commissioner Harrison is properly named herein as the individual responsible for ensuring that the requested preliminary and permanent injunctive relief is carried out. *Koehl v. Dalsheim*, 85 F.3d 86, 89 (2d Cir. 1996).

19. Defendant STEVEN NIGRELLI is the Acting Superintendent of the New York State Police (NYSP) whose principal place of business is in Albany, New York. Superintendent Nigrelli is sued in his official capacity only.

20. As the Acting Superintendent of the New York State Police, Nigrelli is duty-bound to enforce all provisions of the New York State Penal Law, as are his troopers and investigators.

21. Acting Superintendent Nigrelli is properly named herein as the individual responsible for ensuring that the requested preliminary and permanent injunctive relief is carried out. *Koehl v. Dalsheim*, 85 F.3d 86, 89 (2d Cir. 1996).

LEGAL FRAMEWORK

I. The Second Amendment

22. The Second Amendment to the United States Constitution provides: “A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.” The Second Amendment is fully applicable to the states through the Fourteenth Amendment. See, *McDonald v. Chicago*, 561 U.S. 742 (2010).

23. The rights protected by the Second Amendment – the right to possess and carry weapons - are “pre-existing” and “individual rights”. They are not “granted” by the government.

“Putting all of these textual elements together, we find that they **guarantee the individual right to possess and carry weapons in case of confrontation**. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the **Second Amendment, like the First and Fourth Amendments, codified a pre-existing right**. The **very text** of the Second Amendment **implicitly recognizes the pre-existence of the right and declares only that it “shall not be infringed.”** As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L.Ed. 588 (1876), “[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed

District of Columbia v. Heller, 554 U.S. 570, 592 (2008) (emphasis added).

24. Plaintiffs’ right to possess and carry weapons for self-defense is presumptively guaranteed. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126, 2135 (2022) (“In keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”); see also, *Caetano v. Massachusetts*, 577 U.S. ___ (2016) (weapons in common use for self-defense are protected within the scope of the Second Amendment).

and/or exchange a rifle is *wildly inconsistent* with this Nation’s historical tradition of firearm regulation; long guns have been freely owned, made, purchased, possessed, exchanged, and carried since the mid-1600s.² Also repugnant to the Second Amendment is any requirement that the People seek permission from the government to purchase or sell a rifle, or require the public to register the purchase of one’s rifle with the government.

30. Had it been our Nation’s history and tradition to require the People to seek and obtain permission from the government before exercising the preexisting right to possess and carry Arms, the very text of the Second Amendment prohibiting any level of *infringement* would have been in vain. Of course, there is no such historical tradition.

31. Worse yet, subjective licensing schemes that imbue discretion in a government official – like New York’s licensing scheme - violate the Second and Fourteenth Amendments.

“If there be any fixed stars in our constitutional constellation, it is that no official high or petty, shall dictate whether we can exercise our fundamental constitutional rights.”

Reply Brief for Petitioners, *New York State Rifle & Pistol Assn. v. Bruen*, 2021 WL 943564 citing, *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

Every Purchase - Rifle, Shotgun, or Handgun – Requires a NICS Check in New York State

32. Under New York State law, every sale, purchase, and disposal of a handgun, rifle, or shotgun³ must be conducted through a Federal Firearms Licensee (FFL) and may only proceed after the FFL conducts a background check through the National Instant Criminal Background Check System (NICS). NYS General Business Law § 898.

² <https://www.guns.com/news/2017/07/01/guns-of-the-greatest-revolution-ever>

³ Except those conducted “between members of an immediate family”, meaning “spouses, domestic partners, children and step-children.” NYS GBL § 898.

33. Under federal law, every FFL must conduct a NICS check before selling or transferring a handgun, rifle or shotgun to an individual.

34. Under federal law, every individual seeking to purchase a handgun, rifle or shotgun from an FFL must undergo a NICS background check.

The Rifle Bill - Senate Bill 9458

35. Prior to September 4, 2022, ordinary New Yorkers were free to walk into a federally licensed gun store, complete the mandatory ATF 4473 form, subject themselves to a brief background check through the National Instant Criminal Background Check System (NICS) and purchase a semiautomatic rifle.

36. No government permission was required.

37. Ordinary New Yorkers with no prohibitors to the possession or purchase of firearms were free to engage in target shooting with family and friends at the gun range or on hunting trips, where it is common to try out, use, share, give, exchange, and take possession of, even if temporarily, each other's rifles - conduct that is part of this Nation's long-held traditions.

38. The Rifle Bill imposes a discretionary licensing requirement and criminal penalties upon ordinary people, including felony arrest, incarceration, permanent loss of firearm rights, and other criminal and civil penalties for engaging in presumptively protected conduct. **[Exhibit 1].**

39. The Rifle Bill corrals semiautomatic rifles into the same ‘may issue’ discretionary licensing scheme New York employs against handguns – Penal Law § 400.00 - which “vests broad discretion in licensing officers” [*Finley v. Nicandri*, 272 A.D.2d 831, 832 (3d Dept. 2000) (handguns)] to issue, suspend, and revoke the Right (the “Scheme”).

40. The Scheme employs subjective criteria wherein a government employee decides who can and cannot exercise a presumptively protected right by deciding what constitutes the “character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others”⁴, which such government employees have “broad discretion” to determine. Even then, the license “may issue” – or it may not.

41. Section 400.00 codifies what New York courts have been applying to handguns for decades under the false premise that keeping and bearing firearms is a privilege (not a Right), the Second Amendment applies to the collective militia, and is not applicable to the states.⁵

42. But until the Rifle Bill, New York never imposed a licensing requirement on long guns.

43. With the Rifle Bill, semiautomatic rifles – as with handguns – have been demoted from a right to a privilege. *Minervini v. Kelly*, 22 A.D.3d 238, 239 (1st Dept. 2005) (handguns). New York has taken no steps to change its position on handguns since *Bruen* and has only enlarged its web of unconstitutional regulations.

44. Section 400.00(1)(b) is a discretionary and subjective factor that authorizes denial of protected conduct based on an opinion of who has the ‘right’ “character”, can be “trusted”, what constitutes the “essential temperament”, and whether the applicant has one.

45. Subsection (b) also conflicts with the very purpose of the Second Amendment – using a firearm for self-defense, which may necessarily require its use to *specifically* “endanger others.”

⁴ Penal Law § 400.00(1)(b).

⁵ *Peterson v. Kavanagh*, 21 A.D.3d 617, 617–18 (3d Dept. 2005) (“Lastly, we reject petitioner’s argument that the Second Amendment confers an individual right on him to keep and bear arms. Absent evidence that possession of the pistol bears some reasonable relationship to the preservation or efficiency of a well-regulated militia, no individual right to possess it is conferred (see *Bach v. Pataki*, 289 F.Supp.2d 217, 224–226 (2003)).”

46. The Scheme imbues licensing officers with “broad discretion” to suspend, revoke, and refuse to renew individuals found not to pass the ‘moral character’ test if, at any time, a licensee becomes “ineligible to obtain a license” under any of the provisions of § 400.00(1). See, Penal Law § 400.00(11), *Juzumas v. Nassau Cnty., New York*, 33 F.4th 681, 687 (2d Cir. 2022).

47. But the “very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon.” *Bruen*, at 2129 quoting, *Heller*, 554 U.S. at 634. “We then concluded: “A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Ibid*.

48. The Rifle Bill subjects weapons in common use – semiautomatic rifles - to the same interest-balancing test *thrice rejected* by the Supreme Court⁶ where the government’s desire to ‘protect the public’ somehow always ends up outweighing the individual rights of the People protected by the Second Amendment. See, e.g., *Finley v. Nicandri*, 272 A.D.2d 831, 832, 708 N.Y.S.2d 190, 191 (2000) (citing the state’s “substantial and legitimate interest and indeed, a grave responsibility, in insuring the safety of the general public from individuals who, by their conduct, have shown themselves to be lacking the essential temperament or character which should be present in one entrusted with a dangerous instrument.”); *Waskiewicz v. New York City Police Dep’t*, 211 A.D.2d 603, 604 (1st Dept. 1995) (license revoked based on arrest, no resulting conviction).

49. Under the Scheme, a subjective belief that a licensee “exercise[d] [] poor judgment in the handling of a weapon is a sufficient ground for revocation” of a license. *Brookman v. Dahaher*, 234 A.D.2d 615 (3d Dept. 1996) (upholding revocation because licensee “exhibited

⁶ See, *Heller*, at *McDonald*, and *Bruen*

disregard for the proper use of a handgun” by wearing his .38 caliber pistol holstered on his person “in plain view of adults and children in his residential neighborhood” while performing yardwork “in clear violation of the hunting and target practice restrictions on his permit.”⁷

50. A discretionary revocation can take place at will whenever a licensee “at any time becom[es] ineligible to obtain a license”⁸, even under the subjective beliefs of a licensing officer. A licensee is not entitled to a formal hearing before revocation. *Pacicca v. Allesandro*, 19 A.D.3d 500, 501 (2d Dept. 2005).

51. And a revocation of a license issued under section 400.00 requires the **confiscation** of “any and **all firearms, rifles, or shotguns owned or possessed**” by the licensee. See, § 400.00(11)(c).

52. New York’s discretionary Scheme is just that: a Scheme to arbitrarily and subjectively dispossess individuals of their property and their Second Amendment right to possess, purchase, and carry two of the most popular and commonly owned weapons in America to prevent the ability of the People to be Armed for the purpose for which the Second Amendment was codified.

Criminal Penalties Under the Rifle Bill - Penal Law §§ 265.65 and 265.66

53. The Rifle Bill imposes criminal penalties for constitutionally protected conduct should an individual refuse or fail to apply for and obtain a Rifle License.

54. A person is guilty of criminal purchase of a semiautomatic rifle when he purchases or takes possession of a semiautomatic rifle and does not possess a license to purchase or take possession

⁷ Prohibiting open carry would never have been regarded as a ‘tradition’ during the relevant historical time-period set forth in *Heller* and *Bruen*.

⁸ Penal Law § 400.00(11)(a).

of a semiautomatic rifle as provided in subdivision two of section 400.00 of this chapter. Criminal purchase of a semiautomatic rifle is a class A misdemeanor for the first offense and a class E felony for subsequent offenses. Penal Law § 265.65.

55. A person is guilty of criminal sale of a semiautomatic rifle when, knowing or having reason to know it is a semiautomatic rifle, he sells, exchanges, gives or disposes of a semiautomatic rifle to another person and such other person does not possess a license to purchase or take possession of a semiautomatic rifle as provided in subdivision two of section 400.00 of this chapter. Criminal sale of a semiautomatic rifle is a class E felony. Penal Law § 265.66.

56. Rather than punish criminal acts, Penal Law § 265.65 and 265.66 punish innocent, constitutionally protected conduct engaged in by ordinary individuals, like Plaintiffs, in contravention to this Nation’s historical traditions.

57. The Rifle Bill also subjects semiautomatic rifles to an unconstitutional registration requirement, which requires every semiautomatic rifle to be registered on such license, requires the purchaser to seek permission by way of a “purchase document” before taking possession of the rifle from SCPD every time the owner seeks to add or subtract from their rifle collection, for which there is no historical analogue. Penal Law § 400.00(9).

The Rifle Bill is Inconsistent with the Plain Text of the Second Amendment

58. The Rifle Bill is a contemporary control measure inconsistent with the plain text of the Second Amendment.

59. And because “[where] later history contradicts what the text says, the text controls”⁹ the Rifle Bill must be declared unconstitutional and stricken.

⁹ Bruen, at 2137.

“But when it comes to interpreting the Constitution, not all history is created equal.

“Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller*, 554 U.S. at 634–635, 128 S.Ct. 2783. The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates or postdates either time may not illuminate the scope of the right.”

Bruen, at 2136.

60. Under the *Bruen* test, if the regulated conduct falls under the plain text of the Second Amendment, which this does, the government has the burden of justifying its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. *Bruen*, at 2126.

61. Because there is no historical tradition of government-imposed discretionary licensing and registration requirements, or the imposition of criminal penalties on ordinary people for purchasing, taking possession of, selling, transferring, giving, and/or exchanging rifles, the Rifle Bill is inconsistent with the Nation’s historical traditions and must be stricken.

SUFFOLK COUNTY LICENSING BUREAU POLICIES AND PROCEDURES

62. In the meantime, those individuals who have a present plan and intention to purchase a semiautomatic rifle cannot because SCPD will not issue a Rifle License.

63. New York State’s Licensing Scheme identifies 3 distinct licenses: (1) gunsmith/dealer in firearms; (2) license to purchase or take possession of a semiautomatic rifle; and (3) pistol/revolver. Penal Law § 400.00(2).

64. No purchase of a semiautomatic rifle can occur without having first applied for and obtained a license specific to the purchase or possession of semiautomatic rifles. Penal Law § 400.00(2).

65. SCPD has no process for an individual to apply for a Rifle License.
66. SCPD has no process for SCPD to issue a Rifle License.
67. SCPD will not accept applications for a Rifle License for people, like Plaintiff McGregor, who hold a handgun license.
68. According to SCPD's Rifle Policy, a handgun license complies with the Rifle Bill.
69. A handgun license does not comply with the Rifle Bill. See, Penal Law § 400.00(2).
70. Possession of a valid New York State handgun license is not a defense to arrest and prosecution for an offense under Penal Law §§ 265.65 and 265.66.
71. Under the Rifle Bill, federally licensed firearms dealers (gun shops) like Edward Newman and Dark Storm Industries cannot lawfully sell or transfer semiautomatic rifles to anyone who does not hold a Rifle License issued pursuant to Penal Law § 400.00(2), even those individuals who have passed a NICS background check.
72. SCPD will not issue Rifle Licenses and will only issue handgun licenses; under SCPD policy, any individual seeking to lawfully purchase, receive, or transfer a semiautomatic rifle must apply for a *handgun license*.
73. The SCPD Licensing Bureau process for obtaining a handgun license takes between *2-3 years*.
74. Meaning that, even if a handgun license satisfied the requirements under the Rifle Bill, which it does not, an unlicensed individual – like Plaintiff Matthew Olivieri – is prohibited from possessing, receiving, purchasing, selling, giving, or taking possession of semiautomatic rifles until he applies for and obtains a handgun license, which the SCPD takes *2-3 years* to issue.

75. Under the Rifle Bill, Plaintiffs and all other similarly situated people in Suffolk County are *de facto* banned from purchasing, selling, taking possession of, selling, giving, exchanging, and disposing of semiautomatic rifles.¹⁰

76. This Nation has no historical tradition requiring a license or imposing criminal sanctions against ordinary individuals who exercise the presumptively protected right to possess, purchase, give, exchange, receive, sell, and/or carry long guns.

77. Nor is requiring the People to ‘register’ their firearms or seek permission from the government before lawfully adding to or removing from one’s firearms collection part of any historical traditions in America.

78. As a direct result of Defendants’ enforcement of the Rifle Bill, Plaintiffs are divested of the right to engage in conduct presumptively protected by the Second and Fourteenth Amendments.

79. As a direct result of and SCPD’s Rifle Policy, Plaintiffs are divested of the right to engage in conduct presumptively protected by the Second and Fourteenth Amendments.

Plaintiffs

80. Each of the individually named Plaintiffs is eligible to possess, purchase, receive, and transfer firearms under state and federal law.

81. No Plaintiff has ever unlawfully used or threatened the use of a firearm.

82. Plaintiffs will not and should not have to seek permission by way of a discretionary license to purchase, take possession of, sell, give, exchange, and/or dispose of semiautomatic rifles.

83. Plaintiffs will not and should not have to register their semiautomatic rifles with the government.

¹⁰ Again, possession of a handgun license is not a defense to arrest and prosecution for an offense under Penal Law §§ 265.65 and 265.66; a separate Rifle License is required. See, Penal Law § 400.00(2).

84. DSI should not be prevented from selling, transferring, purchasing, or giving semiautomatic to its customers and prospective customers who, through a NICS check, are confirmed legally eligible to receive, purchase, and possess firearms.

85. Plaintiffs' regulated conduct falls within the plain text of the Second Amendment and is presumptively protected.

86. Defendants alone have the burden of proving the challenged regulations are consistent with this Nation's historical traditions of firearm regulation.

87. The challenged regulations are inconsistent with this Nation's historical traditions of firearm regulation.

Michael McGregor

88. Michael McGregor is a resident of Suffolk County and a practicing physician. Dr. McGregor has no prohibitors to the possession of firearms.

89. Dr. McGregor recently attempted to purchase a Ruger 10/22 semiautomatic rifle at RT Smoke 'N Gun ("RT Smoke"), a federally licensed firearm dealer in Mount Vernon (Westchester County), New York.

90. Dr. McGregor was unable to purchase the Ruger or any other semiautomatic rifle from RT Smoke because he did not hold a license to purchase or take possession of semiautomatic rifles.

91. Consistent with the Penal Law, RT Smoke will not sell a semiautomatic rifle to an individual who merely holds a handgun license.

92. Dr. McGregor contracted Karp's Hardware/Long Island Ammo in East Northport, New York (Suffolk County) to inquire about purchasing a semiautomatic rifle.

93. LI Ammo advised Dr. McGregor that it will not sell a semiautomatic rifle to anyone unless the purchaser has a license to purchase and take possession of semiautomatic rifles, or if their existing handgun license specifically indicates a semiautomatic rifle endorsement. A handgun license is not sufficient.

94. Dr. McGregor contacted the SCPD Licensing Bureau about the process for obtaining a semiautomatic Rifle License, and informed that FFLs will not sell him a semiautomatic rifle without a specific license for same. Dr. McGregor also informed Licensing Bureau that NYSP guidance indicates that the semiautomatic rifle endorsement should be available by amending one's NYS handgun license.

95. The SCPD Licensing Bureau informed that they recognize the sportsman pistol license as sufficient to purchase a semiautomatic rifle.

96. The Licensing Bureau also informed that SCPD will require every semiautomatic rifles purchased to be registered on/added to the handgun license.

97. The Licensing Bureau acknowledged that licensing officers "upstate" are not registering semiautomatic rifles on the license; Dr. McGregor informed that "even Westchester is not doing that", to which SCPD replied, "but we are. If you buy a semiautomatic rifle, you bring...in the receipt just like you would any handgun and we'll put it on your license."

98. Dr. McGregor contacted Camp-Site Sport Shop in Huntington Station, New York (Suffolk County) to inquire about purchasing a semiautomatic rifle. Dr. McGregor informed Camp-Site that the SCPD Licensing Bureau said his handgun license was sufficient to purchase a semiautomatic rifle even though it does not say anything about a semiautomatic rifle endorsement. Camp-Site informed Dr. McGregor that he could not purchase a semiautomatic rifle with a handgun license.

99. NYSP guidance indicates that the semiautomatic Rifle License can be issued by virtue of amending an existing handgun license to reflect the endorsement.

100. The SCPD Licensing Bureau informed Dr. McGregor that they will not issue Rifle Licenses or amend handgun licenses to reflect semiautomatic rifle authorization because SCPD considers the handgun license “good enough to purchase rifles” despite the plain language of the Penal Law.

101. Dr. McGregor will not, does not want to, and should not have to, apply for a license to purchase and/or take possession of semiautomatic rifles or register semiautomatic rifles under a license or otherwise.

102. Dr. McGregor also will not, does not want to, and should not have to, apply for a license to sell, give, exchange, and/or dispose of his own property, to wit, the semiautomatic rifles he currently owns.

103. Having to apply to SCPD for a semiautomatic Rifle License as required by the Rifle Bill, even if just an endorsement of Dr. McGregor’s handgun license, will take at least 2 years to be assigned to an investigator, interviewed, photographed, and investigated and 6 months thereafter for a Rifle License to issue.

Zachary Giambalvo

104. Zachary Giambalvo (“Mr. Giambalvo”), is a resident of Suffolk County with no prohibitors to the possession of firearms.

105. For years, Mr. Giambalvo and his father, Donald Giambalvo have enjoyed going to the gun range and practicing target shooting together. Mr. Giambalvo and his father have carried, taken possession of, received, given and shot one another’s semiautomatic rifles at Dark Storm Industries, LLC (DSI) gun range in Suffolk County, New York.

106. Donald Giambalvo is eligible to possess and purchase firearms and has never unlawfully used or threatened the use of a firearm.

107. DSI has a regular police presence; off-duty police officers regularly visit DSI to also, *inter alia*, engage in target practice.

108. Since the passage of the Rifle Bill, Mr. Giambalvo is no longer able to go target shooting with his father at DSI out of fear of being arrested and incarcerated under Penal Law sections 265.56 and 265.66.

109. Every other weekend, Mr. Giambalvo goes target shooting with his semiautomatic rifle at Calverton Range with friends who are all eligible to possess and purchase firearms under state and federal law.

110. In the past, Mr. Giambalvo has carried, taken possession of, and/or received his friends' semiautomatic rifles to inspect and shoot at targets. Likewise, Mr. Giambalvo has given his friends his semiautomatic rifle for them to inspect and use for target shooting.

111. Neither Mr. Giambalvo nor his friends have licenses to purchase or take possession of semiautomatic rifles.

112. Mr. Giambalvo intends to continue to go to target shooting with his friends at Calverton and will continue to carry, take possession of, and/or shoot his friends' semiautomatic rifles and he will also give his friends his semiautomatic rifle to use for target shooting, knowing that neither he nor his friends have Rifle Licenses. Mr. Giambalvo has plans to go engage in such protected conduct next weekend and twice a month thereafter.

113. Suffolk County officers and other law enforcement officers go target shooting at Calverton during the times that Mr. Giambalvo is there shooting with friends.

114. Mr. Giambalvo faces a credible and imminent risk of arrest, incarceration through the enforcement of Penal Law sections 265.65 and 265.66 by SCPD and NYSP, and other criminal and civil penalties for engaging in such constitutionally protected conduct.

115. Mr. Giambalvo's risk of enforcement is particularly imminent because he has publicly announced his intention to violate the law in this pleading.

116. Mr. Giambalvo also has the present intention to purchase a World War II era semi-automatic rifle from an FFL outside of New York and completing the transfer in New York through DSI, but is completely barred from doing so because of the Rifle Bill.

117. Mr. Giambalvo cannot obtain a rifle license from SCPD because there is no process to obtain one.

118. Even if SCPD had such a process, Mr. Giambalvo objects to any requirement that he apply for and obtain such a license to be able to lawfully exercise his Second Amendment rights.

119. SCPD's policy is that no separate Rifle License is required to purchase, take possession of, give, exchange, or otherwise dispose of a semiautomatic rifle, and SCPD offers no process to obtain a Rifle License.

120. SCPD's policy regarding a Rifle License directly conflicts with the plain language of Penal Law sections 400.00(2), 265.65, and 265.66.

121. Mr. Giambalvo should not have to choose between exercising a right protected by the Second Amendment or violating the state's criminal laws.

Paul Felice

122. Paul Felice (“Mr. Felice”), is a resident of Suffolk County with no prohibitors to the possession of firearms.

123. Mr. Felice lawfully owns long guns, including semi-automatic rifles, at least one of which he purchased from Dark Storm Industries.

124. Mr. Felice enjoys target shooting, whether alone or with friends, at various gun ranges including Dark Storm Industries and Calverton and goes target shooting at least 1-2 times per month. When Mr. Felice goes target shooting with his friends, it is not uncommon for them to target shot with one another’s semi-automatic rifles.

125. Because neither Mr. Felice nor his friends hold Rifle Licenses – and cannot because SCPD does not issue Rifle Licenses - they are barred by Penal Law 265.65 and 265.66 from engaging in protected conduct.

126. Mr. Felice has present plans to purchase a semi-automatic rifle, a Black Rain Ordnance, which would be transferred to him by Dark Storm Industries after a NICS background check.

127. Mr. Felice does not have a Rifle License and will not apply for such a discretionary license.

128. The Rifle Bill constitutes an absolute bar to Mr. Felice’s exercise of conduct protected by the plain text of the Second Amendment – keeping arms – because Penal Law § 265.65 prohibits Mr. Felice from purchasing semi-automatic rifles.

137. Even if SCPD had such a process to apply for and obtain a Rifle License, Mr. Olivieri objects to any requirement that he apply for and obtain such a license to be able to lawfully exercise his Second Amendment rights.

138. Mr. Olivieri also objects to any requirement that he register his firearms on any government license.

139. Mr. Olivieri should not have to choose between exercising a right protected by the Second Amendment or violating the state's criminal laws.

Ed Newman and Dark Storm Industries

140. Edward Newman ("Mr. Newman") is the owner of Dark Storm Industries (DSI) located in Suffolk County, New York.

141. Since 2013, DSI has held a federal firearms license as a manufacturer.

142. DSI's business model encompasses the sale of firearms, ammunition, and related self-defense and sport target shooting products. DSI sells handguns (including revolvers and semi-automatic pistols), rifles (including semi-automatic rifles), and shotguns. DSI is the largest manufacturer of semiautomatic rifles in the State of New York.

143. Since the passage of the Rifle Bill, DSI can no longer sell or transfer semiautomatic rifles to its customers and potential customers who have not applied for and obtained a Rifle License.

144. Such class of individuals includes one or more of the plaintiffs in this action and other ordinary citizens who are not part of this action but also seek access to DSI's market function, to wit, the purchase of semiautomatic rifles and on whose behalf DSI advocates for their constitutional right to purchase, sell, and receive semiautomatic rifles.

145. As a direct result of SCPD's enforcement of the Rifle Bill, Mr. Newman and DSI are prohibited from engaging in its normal and customary business; and its customers and potential customers are unable to purchase, transfer, and receive semi-automatic firearms semiautomatic rifles because of the threat of criminal penalties under Penal Law §§ 265.65 and 265.66 to Mr. Newman, DSI, customers, and potential customers, including arrest, incarceration, and fines.

146. As a direct result of SCPD's licensing policies and procedures, and the enforcement of the Rifle Bill, Mr. Newman and DSI are prohibited from engaging in their normal and customary business; and their customers and potential customers are unable to purchase, transfer, and receive semi-automatic firearms semi-automatic rifles under threat of criminal penalties under Penal Law §§ 265.65 and 265.66 subjecting Mr. Newman, DSI, their customers, and potential customers to arrest, felony conviction, incarceration, and fines, as well as actual economic loss.

NYSP Active Enforcement of Firearm Regulations

147. Each Plaintiff faces a credible and imminent risk of arrest, incarceration, and other criminal penalties by SCPD and the New York State Police for engaging in presumptively protected conduct.

148. Superintendent Nigrelli publicly thanked Governor Hochul as “someone [he] looks up to” for her “leadership on this topic...laser-like focus on ***eradicating guns***, illegal guns, and gun crimes...we appreciate that at the State Police.”¹¹ (36:10). (emphasis added).

¹¹ <https://www.youtube.com/watch?v=gC1L2rrztQs>

149. Superintendent Nigrelli vowed that the NYSP will enforce the State's gun laws against everyone who violates them:

“Governor, it’s an easy message. I don’t have to spell it out more than this. We’ll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York State Troopers are *standing ready to do our job to ensure .. all laws are enforced.*” *Id.* (emphasis added).

150. Penal Law §§ 265.65 and 265.66 will be enforced by the NYSP against anyone who purchases, receives, transfers, and/or possesses a semi-automatic rifle without applying for and obtaining a Rifle License, including Plaintiffs and similarly situated individuals.

151. Likewise, SCPD is enforcing Penal Law §§ 265.65 and 265.66 against anyone who purchases, receives, transfers, and/or possesses a semi-automatic rifle without applying for and obtaining a Rifle License, including Plaintiffs and similarly situated individuals.

152. As a direct result of Defendants’ conduct, Plaintiffs have been caused to suffer, *inter alia*, the presumed violation of their constitutional rights as protected by the Second and Fourteenth Amendments, presumed damages resulting from the violation of their constitutional rights in at least a nominal amount, economic damages, and they have otherwise been rendered sick and sore.

153. As a direct result of Superintendent Nigrelli’s enforcement of the Rifle Bill, Mr. Newman and DSI are prohibited from engaging in their normal and customary business; and their customers and potential customers are unable to purchase, transfer, and receive semi-automatic firearms semi-automatic rifles under threat of criminal penalties under Penal Law §§ 265.65 and 265.66 subjecting Mr. Newman, DSI, their customers, and potential customers to arrest, felony conviction, incarceration, and fines.

154. Plaintiffs seek a judicial declaration that Senate Bill 9458 violates the Second and Fourteenth Amendments.

155. Plaintiffs seek a judicial declaration that the SCPD policies and procedures described herein violate the Second and Fourteenth Amendments.

156. Plaintiffs further seek an Order preliminarily and permanently enjoining Commissioner Harrison and Superintendent Nigrelli, their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with such defendants, who receive actual notice thereof from enforcing Senate Bill 9458.

COUNT I
U.S. CONST., AMEND. II and XIV, 42 U.S.C. § 1983

157. Repeat and reallege paragraphs “1” through and including “156.”

158. Under the theory that defendants are liable to plaintiffs for violations of their preexisting and guaranteed individual rights as protected by the Second Amendment, and made applicable to the States through the Fourteenth Amendment, to the U.S. Constitution. 42 U.S.C. § 1983.

COUNT II
MONELL LIABILITY
(Suffolk County)

159. Repeats and realleges paragraphs “1” through and including “158.”

160. Under the theory that, by creating, maintaining, enforcing, following, and/or applying Suffolk County’s unconstitutional policy described herein, the County of Suffolk is liable to the plaintiff under *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978) for the violations of Plaintiffs’ constitutional rights as plead herein, 42 U.S.C. §1983.

WHEREFORE, a Judgment and Order is respectfully requested:

- Declaring that Senate Bill 9458 violates the Second and Fourteenth Amendments to the U.S. Constitution;
- Declaring that the policies, processes, and procedures related to the licensing of semiautomatic rifles enforced and implemented by SCPD violate the Second and Fourteenth Amendments to the U.S. Constitution;
- Granting temporary and permanent injunctive relief against Commissioner Harrison and Superintendent Nigrelli, their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with such defendants, who receive actual notice thereof from enforcing any provision of Senate Bill 9458;
- Awarding in favor of Plaintiffs presumed nominal damages against Defendants for the violation of their of their Second and Fourteenth Amendment rights;
- Awarding in favor of Plaintiffs and against Suffolk County, New York compensatory damages for the violation of their Second and Fourteenth Amendment rights;
- Awarding in favor of Ed Newman and Dark Storm Industries, LLC economic damages against Suffolk County, New York;
- Awarding costs, disbursements, and reasonable statutory attorney's fees pursuant to 42 USC 1988; and

- Granting such other, further, and different relief as to this Court seems just, equitable, and proper.

Dated: February 10, 2023
Scarsdale, New York

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EXHIBIT 1

STATE OF NEW YORK

9458

IN SENATE

May 30, 2022

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the purchase or taking possession of a semiautomatic rifle

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 2, 3, 6, 7, 8, 9 and 14 of section 400.00 of the penal law, subdivisions 2 and 8 as amended by chapter 189 of the laws of 2000, paragraph (a) of subdivision 3 and subdivision 9 as amended by chapter 1 of the laws of 2013, paragraph (b) of subdivision 3 as added by chapter 778 of the laws of 1985, subdivision 6 as amended by chapter 104 of the laws of 2019, and subdivision 14 as amended by chapter 195 of the laws of 2005, are amended to read as follows:

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a semiautomatic rifle, other than an assault weapon or disguised gun, shall be issued to purchase or take possession of such a firearm when such transfer of ownership occurs on or after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keep-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD16020-02-2

er; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

3. Applications. (a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof.

(b) Application for an exemption under paragraph seven-b of subdivision a of section 265.20 of this chapter. Each applicant desiring to obtain the exemption set forth in paragraph seven-b of subdivision a of section 265.20 of this chapter shall make such request in writing of the licensing officer with whom his application for a license is filed, at the time of filing such application. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that has met with the applicant and that he has determined that, in his judgment, said applicant does not appear to be or poses a threat to be, a danger to himself or to others. He shall

1 include a copy of his certificate as an instructor in small arms, if he
2 is required to be certified, and state his address and telephone number.
3 He shall specify the exact location by name, address and telephone
4 number where such instruction will take place. Such licensing officer
5 shall, no later than ten business days after such filing, request the
6 duly constituted police authorities of the locality where such applica-
7 tion is made to investigate and ascertain any previous criminal record
8 of the applicant pursuant to subdivision four of this section. Upon
9 completion of this investigation, the police authority shall report the
10 results to the licensing officer without unnecessary delay. The licens-
11 ing officer shall no later than ten business days after the receipt of
12 such investigation, determine if the applicant has been previously
13 denied a license, been convicted of a felony, or been convicted of a
14 serious offense, and either approve or disapprove the applicant for
15 exemption purposes based upon such determinations. If the applicant is
16 approved for the exemption, the licensing officer shall notify the
17 appropriate duly constituted police authorities and the applicant. Such
18 exemption shall terminate if the application for the license is denied,
19 or at any earlier time based upon any information obtained by the
20 licensing officer or the appropriate police authorities which would
21 cause the license to be denied. The applicant and appropriate police
22 authorities shall be notified of any such terminations.

23 6. License: validity. Any license issued pursuant to this section
24 shall be valid notwithstanding the provisions of any local law or ordi-
25 nance. No license shall be transferable to any other person or prem-
26 ises. A license to carry or possess a pistol or revolver, or to purchase
27 or take possession of a semiautomatic rifle, not otherwise limited as to
28 place or time of possession, shall be effective throughout the state,
29 except that the same shall not be valid within the city of New York
30 unless a special permit granting validity is issued by the police
31 commissioner of that city. Such license to carry or possess shall be
32 valid within the city of New York in the absence of a permit issued by
33 the police commissioner of that city, provided that (a) the firearms
34 covered by such license have been purchased from a licensed dealer with-
35 in the city of New York and are being transported out of said city
36 forthwith and immediately from said dealer by the licensee in a locked
37 container during a continuous and uninterrupted trip; or provided that
38 (b) the firearms covered by such license are being transported by the
39 licensee in a locked container and the trip through the city of New York
40 is continuous and uninterrupted; or provided that (c) the firearms
41 covered by such license are carried by armored car security guards
42 transporting money or other valuables, in, to, or from motor vehicles
43 commonly known as armored cars, during the course of their employment;
44 or provided that (d) the licensee is a retired police officer as police
45 officer is defined pursuant to subdivision thirty-four of section 1.20
46 of the criminal procedure law or a retired federal law enforcement offi-
47 cer, as defined in section 2.15 of the criminal procedure law, who has
48 been issued a license by an authorized licensing officer as defined in
49 subdivision ten of section 265.00 of this chapter; provided, further,
50 however, that if such license was not issued in the city of New York it
51 must be marked "Retired Police Officer" or "Retired Federal Law Enforce-
52 ment Officer", as the case may be, and, in the case of a retired officer
53 the license shall be deemed to permit only police or federal law
54 enforcement regulations weapons; or provided that (e) the licensee is a
55 peace officer described in subdivision four of section 2.10 of the crim-
56 inal procedure law and the license, if issued by other than the city of

1 New York, is marked "New York State Tax Department Peace Officer" and in
2 such case the exemption shall apply only to the firearm issued to such
3 licensee by the department of taxation and finance. A license as
4 gunsmith or dealer in firearms shall not be valid outside the city or
5 county, as the case may be, where issued. Notwithstanding any inconsis-
6 tent provision of state or local law or rule or regulation, the premises
7 limitation set forth in any license to have and possess a pistol or
8 revolver in the licensee's dwelling or place of business pursuant to
9 paragraph (a) or (b) of subdivision two of this section shall not
10 prevent the transport of such pistol or revolver directly to or from (i)
11 another dwelling or place of business of the licensee where the licensee
12 is authorized to have and possess such pistol or revolver, (ii) an
13 indoor or outdoor shooting range that is authorized by law to operate as
14 such, (iii) a shooting competition at which the licensee may possess
15 such pistol or revolver consistent with the provisions of subdivision a
16 of section 265.20 of this chapter or consistent with the law applicable
17 at the place of such competition, or (iv) any other location where the
18 licensee is lawfully authorized to have and possess such pistol or
19 revolver; provided however, that during such transport to or from a
20 location specified in clauses (i) through (iv) of this paragraph, the
21 pistol or revolver shall be unloaded and carried in a locked container,
22 and the ammunition therefor shall be carried separately; provided
23 further, however, that a license to have and possess a pistol or revol-
24 ver in the licensee's dwelling or place of business pursuant to para-
25 graph (a) or (b) of subdivision two of this section that is issued by a
26 licensing officer other than the police commissioner of the city of New
27 York shall not authorize transport of a pistol or revolver into the city
28 of New York in the absence of written authorization to do so by the
29 police commissioner of that city. The term "locked container" shall not
30 include the glove compartment or console of a vehicle.

31 7. License: form. Any license issued pursuant to this section shall,
32 except in the city of New York, be approved as to form by the super-
33 intendent of state police. A license to carry or possess a pistol or
34 revolver or to purchase or take possession of a semiautomatic rifle
35 shall have attached the licensee's photograph, and a coupon which shall
36 be removed and retained by any person disposing of a firearm to the
37 licensee. ~~[Such]~~ A license to carry or possess a pistol or revolver
38 shall specify the weapon covered by calibre, make, model, manufacturer's
39 name and serial number, or if none, by any other distinguishing number
40 or identification mark, and shall indicate whether issued to carry on
41 the person or possess on the premises, and if on the premises shall also
42 specify the place where the licensee shall possess the same. If such
43 license is issued to an alien, or to a person not a citizen of and
44 usually a resident in the state, the licensing officer shall state in
45 the license the particular reason for the issuance and the names of the
46 persons certifying to the good character of the applicant. Any license
47 as gunsmith or dealer in firearms shall mention and describe the prem-
48 ises for which it is issued and shall be valid only for such premises.

49 8. License: exhibition and display. Every licensee while carrying a
50 pistol or revolver shall have on his or her person a license to carry
51 the same. Every person licensed to possess a pistol or revolver on
52 particular premises shall have the license for the same on such prem-
53 ises. Every person licensed to purchase or take possession of a semiau-
54 tomatic rifle shall have the license for the same on his or her person
55 while purchasing or taking possession of such weapon. Upon demand, the
56 license shall be exhibited for inspection to any peace officer, who is

1 acting pursuant to his or her special duties, or police officer. A
2 license as gunsmith or dealer in firearms shall be prominently displayed
3 on the licensed premises. A gunsmith or dealer of firearms may conduct
4 business temporarily at a location other than the location specified on
5 the license if such temporary location is the location for a gun show or
6 event sponsored by any national, state, or local organization, or any
7 affiliate of any such organization devoted to the collection, competi-
8 tive use or other sporting use of firearms. Any sale or transfer at a
9 gun show must also comply with the provisions of article thirty-nine-DD
10 of the general business law. Records of receipt and disposition of
11 firearms transactions conducted at such temporary location shall include
12 the location of the sale or other disposition and shall be entered in
13 the permanent records of the gunsmith or dealer of firearms and retained
14 on the location specified on the license. Nothing in this section shall
15 authorize any licensee to conduct business from any motorized or towed
16 vehicle. A separate fee shall not be required of a licensee with respect
17 to business conducted under this subdivision. Any inspection or exam-
18 ination of inventory or records under this section at such temporary
19 location shall be limited to inventory consisting of, or records related
20 to, firearms held or disposed at such temporary locations. Failure of
21 any licensee to so exhibit or display his or her license, as the case
22 may be, shall be presumptive evidence that he or she is not duly
23 licensed.

24 9. License: amendment. Elsewhere than in the city of New York, a
25 person licensed to carry or possess a pistol or revolver or to purchase
26 or take possession of a semiautomatic rifle may apply at any time to his
27 or her licensing officer for amendment of his or her license to include
28 one or more such weapons or to cancel weapons held under license. If
29 granted, a record of the amendment describing the weapons involved shall
30 be filed by the licensing officer in the executive department, division
31 of state police, Albany. The superintendent of state police may author-
32 ize that such amendment be completed and transmitted to the state police
33 in electronic form. Notification of any change of residence shall be
34 made in writing by any licensee within ten days after such change
35 occurs, and a record of such change shall be inscribed by such licensee
36 on the reverse side of his or her license. Elsewhere than in the city of
37 New York, and in the counties of Nassau and Suffolk, such notification
38 shall be made to the executive department, division of state police,
39 Albany, and in the city of New York to the police commissioner of that
40 city, and in the county of Nassau to the police commissioner of that
41 county, and in the county of Suffolk to the licensing officer of that
42 county, who shall, within ten days after such notification shall be
43 received by him or her, give notice in writing of such change to the
44 executive department, division of state police, at Albany.

45 14. Fees. In the city of New York and the county of Nassau, the annual
46 license fee shall be twenty-five dollars for gunsmiths and fifty dollars
47 for dealers in firearms. In such city, the city council and in the coun-
48 ty of Nassau the Board of Supervisors shall fix the fee to be charged
49 for a license to carry or possess a pistol or revolver or to purchase or
50 take possession of a semiautomatic rifle and provide for the disposition
51 of such fees. Elsewhere in the state, the licensing officer shall
52 collect and pay into the county treasury the following fees: for each
53 license to carry or possess a pistol or revolver or to purchase or take
54 possession of a semiautomatic rifle, not less than three dollars nor
55 more than ten dollars as may be determined by the legislative body of
56 the county; for each amendment thereto, three dollars, and five dollars

1 in the county of Suffolk; and for each license issued to a gunsmith or
2 dealer in firearms, ten dollars. The fee for a duplicate license shall
3 be five dollars. The fee for processing a license transfer between coun-
4 ties shall be five dollars. The fee for processing a license or renewal
5 thereof for a qualified retired police officer as defined under subdivi-
6 sion thirty-four of section 1.20 of the criminal procedure law, or a
7 qualified retired sheriff, undersheriff, or deputy sheriff of the city
8 of New York as defined under subdivision two of section 2.10 of the
9 criminal procedure law, or a qualified retired bridge and tunnel offi-
10 cer, sergeant or lieutenant of the triborough bridge and tunnel authori-
11 ty as defined under subdivision twenty of section 2.10 of the criminal
12 procedure law, or a qualified retired uniformed court officer in the
13 unified court system, or a qualified retired court clerk in the unified
14 court system in the first and second judicial departments, as defined in
15 paragraphs a and b of subdivision twenty-one of section 2.10 of the
16 criminal procedure law or a retired correction officer as defined in
17 subdivision twenty-five of section 2.10 of the criminal procedure law
18 shall be waived in all counties throughout the state.

19 § 2. Subdivisions 1 and 3 of section 400.01 of the penal law, subdivi-
20 sion 1 as amended by chapter 511 of the laws of 2014 and subdivision 3
21 as added by chapter 210 of the laws of 1999, are amended to read as
22 follows:

23 1. A license to carry or possess a firearm or to purchase or take
24 possession of a semiautomatic rifle for a retired sworn member of the
25 division of state police shall be granted in the same manner and upon
26 the same terms and conditions as licenses issued under section 400.00 of
27 this article provided, however, that applications for such license may
28 be made to, and the licensing officer may be, the superintendent of
29 state police.

30 3. The provisions of this section shall only apply to license applica-
31 tions made or renewals which must be made on or after the effective date
32 of this section. A license to carry or possess a pistol or revolver or
33 to purchase or take possession of a semiautomatic rifle issued pursuant
34 to the provisions of section 400.00 of this article to a person covered
35 by the provisions of this section shall be valid until such license
36 would have expired pursuant to the provisions of section 400.00 of this
37 article; provided that, on or after the effective date of this section,
38 an application or renewal of such license shall be made pursuant to the
39 provisions of this section.

40 § 3. Subdivision 9 of section 265.00 of the penal law, as amended by
41 chapter 189 of the laws of 2000, is amended to read as follows:

42 9. "Dealer in firearms" means any person, firm, partnership, corpo-
43 ration or company who engages in the business of purchasing, selling,
44 keeping for sale, loaning, leasing, or in any manner disposing of, any
45 assault weapon, large capacity ammunition feeding device, pistol ~~[or]~~,
46 revolver, or semiautomatic rifle.

47 § 4. Subdivision 7 of section 265.10 of the penal law, as amended by
48 chapter 189 of the laws of 2000, is amended to read as follows:

49 7. Any person, other than a wholesale dealer, or gunsmith or dealer in
50 firearms duly licensed pursuant to section 400.00 of this chapter,
51 lawfully in possession of a firearm or semiautomatic rifle, who disposes
52 of the same without first notifying in writing the licensing officer in
53 the city of New York and counties of Nassau and Suffolk and elsewhere in
54 the state the executive department, division of state police, Albany, is
55 guilty of a class A misdemeanor.

1 § 5. The penal law is amended by adding a new section 265.65 to read
2 as follows:

3 § 265.65 Criminal purchase of a semiautomatic rifle.

4 A person is guilty of criminal purchase of a semiautomatic rifle when
5 he or she purchases or takes possession of a semiautomatic rifle and
6 does not possess a license to purchase or take possession of a semiauto-
7 matic rifle as provided in subdivision two of section 400.00 of this
8 chapter.

9 Criminal purchase of a semiautomatic rifle is a class A misdemeanor for
10 the first offense and a class E felony for subsequent offenses.

11 § 6. The penal law is amended by adding a new section 265.66 to read
12 as follows:

13 § 265.66 Criminal sale of a semiautomatic rifle.

14 A person is guilty of criminal sale of a semiautomatic rifle when,
15 knowing or having reason to know it is a semiautomatic rifle, he or she
16 sells, exchanges, gives or disposes of a semiautomatic rifle to another
17 person and such other person does not possess a license to purchase or
18 take possession of a semiautomatic rifle as provided in subdivision two
19 of section 400.00 of this chapter.

20 Criminal sale of a semiautomatic rifle is a class E felony.

21 § 7. Subdivision 10 of section 400.00 of the penal law is amended by
22 adding a new paragraph (c) to read as follows:

23 (c) A license to purchase or take possession of a semiautomatic rifle
24 as defined in subdivision two of this section shall be recertified to
25 the applicable licensing officer every five years following the issuance
26 of such license. Failure to renew such a license shall be a violation
27 punishable by a fine not to exceed two hundred fifty dollars, and such
28 failure to renew shall be considered by the licensing officer when
29 reviewing future license applications by the license holder pursuant to
30 this chapter.

31 § 8. This act shall take effect on the ninetieth day after it shall
32 have become a law and shall apply only to purchases or transfers of
33 ownership made on or after such effective date.